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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON
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10 ANASTASIA STEVENS-WOODS,
11 Plaintiff,

Civil No. 07-1375-AA
OPINION AND ORDER

12 vs.

13 MICHAEL J. ASTRUE,
14 Commissioner of Social Security,

15 Defendant.

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17 Schneider Law Offices
18 PO Box 16310
19 Portland, Oregon 97292-0310
20 Attorney for plaintiff

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33 Attorneys for defendant

34 AIKEN, Judge:

35 Claimant, Anastasia Stevens-Woods, brings this action

1 pursuant to the Social Security Act (the Act), 42 U.S.C. §§
2 405(g) and 1383(c)(3), to obtain judicial review of a final
3 decision of the Commissioner denying her application for
4 disability insurance benefits under Title II of the Act and for
5 Supplemental Security Income (SSI) disability benefits under
6 Title XVI of the Act. For the reasons set forth below, the
7 Commissioner's decision is reversed and remanded for payment of
8 benefits.

9 **PROCEDURAL BACKGROUND**

10 Plaintiff filed applications for disability insurance
11 benefits and SSI disability benefits on July 13, 2005, alleging
12 an onset date of October 1, 2001. Tr. 16, 66-74. Plaintiff
13 alleged she was disabled due to temporomandibular joint (TMJ)
14 dysfunction, carpal tunnel syndrome (CTS), a pinched nerve, mood
15 disorder, depression, and anxiety. Tr. 87. Her claims were
16 denied initially and upon reconsideration, and a request for a
17 hearing was filed. Tr. 16, 28-37, 41-47. On September 20, 2006,
18 a hearing was held. Tr. 16, 697-743. On October 24, 2006, the
19 ALJ issued a decision denying plaintiff's applications. Tr. 16-
20 23. On July 21, 2007, the Appeals Council denied plaintiff's
21 request for review, tr. 507, making the ALJ's decision the final
22 Agency decision. 20 C.F.R. §§ 404.981, 416.1481, 422.210.

23 **STATEMENT OF THE FACTS**

24 Plaintiff is a 53-year-old woman. Her past relevant work
25 was as a farm hand, packaging machine helper, gas station
26 attendant, street sweeper, parking lot attendant, retail cashier
27 and retail customer service provider. Tr. 736-37. Plaintiff is
28 a high school graduate. Tr. 702-03. Plaintiff alleges that she

1 suffers from the severe impairments of lumbar degenerative disc
 2 disease, diabetes and left carpal tunnel syndrome. Tr. 18.
 3 Plaintiff further alleges that she suffers from morbid obesity,
 4 knee problems, hip problems and temporomandibular (TMJ)
 5 dysfunction. Tr. 18, 714, 716-17.

6 STANDARD OF REVIEW

7 This court must affirm the Secretary's decision if it is
 8 based on proper legal standards and the findings are supported by
 9 substantial evidence in the record. Hammock v. Bowen, 879 F.2d
 10 498, 501 (9th Cir. 1989). Substantial evidence is "more than a
 11 mere scintilla. It means such relevant evidence as a reasonable
 12 mind might accept as adequate to support a conclusion."
 13 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting
 14 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).
 15 The court must weigh "both the evidence that supports and
 16 detracts from the Secretary's conclusions." Martinez v. Heckler,
 17 807 F.2d 771, 772 (9th Cir. 1986).

18 The initial burden of proof rests upon the claimant to
 19 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486
 20 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate
 21 an "inability to engage in any substantial gainful activity by
 22 reason of any medically determinable physical or mental
 23 impairment which can be expected . . . to last for a continuous
 24 period of not less than 12 months. . . ." 42 U.S.C.
 25 § 423(d)(1)(A).

26 The Secretary has established a five-step sequential
 27 process for determining whether a person is disabled. Bowen v.
 28 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,

1 416.920. First the Secretary determines whether a claimant is
2 engaged in "substantial gainful activity." If so, the claimant
3 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.
4 §§ 404.1520(b), 416.920(b).

5 In step two the Secretary determines whether the claimant
6 has a "medically severe impairment or combination of
7 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
8 §§ 404.1520(c), 416.920(c). If not, the claimant is not
9 disabled.

10 In step three the Secretary determines whether the
11 impairment meets or equals "one of a number of listed impairments
12 that the Secretary acknowledges are so severe as to preclude
13 substantial gainful activity." Id.; see 20 C.F.R.
14 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively
15 presumed disabled; if not, the Secretary proceeds to step four.
16 Yuckert, 482 U.S. at 141.

17 In step four the Secretary determines whether the claimant
18 can still perform "past relevant work." 20 C.F.R.
19 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not
20 disabled. If she cannot perform past relevant work, the burden
21 shifts to the Secretary. In step five, the Secretary must
22 establish that the claimant can perform other work. Yuckert, 482
23 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &
24 (f). If the Secretary meets this burden and proves that the
25 claimant is able to perform other work which exists in the
26 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,
27 416.966.

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DISCUSSION

1. The ALJ's Findings

At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since the alleged onset date. Tr. 18, Finding 2. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). This finding is not in dispute.

At step two, the ALJ found that plaintiff had severe impairments of lumbar degenerative disc disease, diabetes and CTS of the left hand. Tr. 18, Finding 3. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). This finding is in dispute because plaintiff asserts that she had other impairments that were severe.

At step three, the ALJ found that plaintiff's impairments did not meet or equal the requirements of a listed impairment. Tr. 19, Finding 4. 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d). This finding is not in dispute.

The ALJ determined that plaintiff had the residual functional capacity (RFC) to lift and carry 20 pounds occasionally and 10 pounds frequently, sit, stand, and walk for up to 6 hours in an 8-hour work day, alternating between sitting and standing to relieve pain and discomfort; she could only occasionally climb and stoop, and she was precluded from constant use of her nondominant left upper extremity. Finally, she was restricted to only limited contact with her co-workers and to brief and structured interactions with the general public. Tr. 20, Finding 5. 20 C.F.R. §§ 404.1520(e), 404.1545, 416.920(e), 416.945. This finding is in dispute.

At step four, the ALJ found that plaintiff was able to perform her past relevant work as a parking lot attendant or a cashier, and therefore found her not disabled. Tr. 23, Finding 6. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1520(f), 416.920(a)(4)(iv), 416.920(f). This finding is in dispute.

2. Plaintiff's Allegations of Error

A. Plaintiff's Impairments

An impairment will be found severe if it "significantly limits [plaintiff's] physical or mental ability to do basic work activities." 20 C.F.R. §§ 404.1520(c), 416.920(c). See also, SSR 96-3p ("an impairment that is 'not severe' must be a slight abnormality (or combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities"). Examples of basic work activities include physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; capacities for seeing, hearing, and speaking; understanding, carrying out, and remembering simple instructions, use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting. 20 C.F.R. §§ 404.1521(b)(1)-(6), 416.921(b)(1)-(6).

The burden is on plaintiff to establish a severe impairment by providing medical evidence showing she has an impairment and how severe it is during the time she says she is disabled. See Edlund v. Massanari, 253 F.3d 1152, 1159-60 (9th Cir. 2001).

Plaintiff argues that the ALJ erred by finding that plaintiff's obesity, knee problems, depression and gender identity disorder were not severe. I agree and find that the

record supports plaintiff's assertion that her depression has a significant impact on her ability to perform work duties. Plaintiff's treating providers have consistently and overwhelming diagnosed plaintiff with a serious depressive disorder including persistent suicidal ideation. In January 2003, Dr. Becker diagnosed plaintiff with "depression," and made a change to her anti-depression medications. Tr. 174. In August 2003, Dr. Becker saw plaintiff again, maintained the diagnosis of "depression," and stated [plaintiff] should be off work at least three more months." Tr. 168. In December 2003, Dr. Becker noted, after seeing plaintiff, that her "depression [is] under poor control," and made yet another change to her anti-depression medications. Tr. 165.

Beginning August 2000, plaintiff has been treated by her mental health therapist, Bryan Neff, L.C.S.W. In July 2004, Mr. Neff diagnosed plaintiff with "multiple factors impacting depression, [and] increased anxiety. Tr. 222. In April 2005, plaintiff was seen by Dr. Ganzini, a psychiatrist at the Veterans Administration Medical Center (VAMC). Tr. 282. Dr. Ganzini noted plaintiff was being followed for treatment of depression and anxiety. Id. Plaintiff's medications were changed. Id. Plaintiff was subsequently seen again by Dr. Ganzini who assessed plaintiff with a "major depressive disorder" and again changed her medications. Tr. 318. Byran Neff then saw plaintiff and concluded "vet clearly impaired in terms of resuming any meaningful work stressed importance of calling this writer if parasuicidal urges return." Tr. 283. Bryan Neff subsequently saw plaintiff for "worsened depression," and gave

1 plaintiff a GAF of 46. On August 19, 2005, plaintiff was seen by
2 Dr. Ward, a clinical psychologist, who administered a
3 comprehensive battery of mental health tests to plaintiff. Dr.
4 Ward concluded that plaintiff is experiencing "significant
5 distress and depression. . . . The veteran endorsed items
6 suggesting that she currently experiences suicidal ideation . .
7 . . Her potential for self-harm should be monitored on an ongoing
8 basis." Tr. 439. Dr. Ward gave plaintiff a GAF score of 45.

9 On September 28, 2005, plaintiff was evaluated by Dr. Julie
10 Nelligan, a clinical psychologist, who assessed plaintiff with a
11 major depressive disorder, finding that she "has minimal social
12 support and appears to be having difficulty coping with current
13 stressors." Tr. 513. Further, the record is replete with
14 evidence that plaintiff experienced suicidal ideation during the
15 relevant time period. Tr. 322, 439. Contrary to the ALJ's
16 finding that "plaintiff's depression was in remission and her
17 symptoms were well-controlled with medication," the record
18 reflects that plaintiff's depression is ongoing. Finally, the
19 court notes SSR 06-03p, which provides that opinions from medical
20 sources, such as Mr. Neff's, "are important and should be
21 evaluated on key issues such as impairment severity and
22 functional effects." I find that Mr. Neff's opinions and
23 findings, along with those of plaintiff's treating doctors, are
24 probative evidence of the significant impact of plaintiff's
25 impairments on her ability to work.

26 B. Ability to Return to Past Relevant Work

27 Plaintiff argues that at step four of the disability
28 analysis, the ALJ erred in failing to incorporate all of

1 plaintiff's limitations into his residual functional capacity
2 determination. The defendant responds that the ALJ is "not
3 required to include opinion evidence that has been properly
4 discounted." Def's memo, p. 12. However, as discussed above,
5 the ALJ improperly discounted medical evidence and testimony in
6 the record supporting the severity of plaintiff's depression and
7 suicidal ideation. Even Dr. Rethinger's opinion, relied on by
8 the ALJ as a non-examining doctor, found that plaintiff has
9 depression as a medically determinable impairment. Tr. 398.
10 Because the ALJ failed to include any limitations with regard to
11 plaintiff's depression (ability to sustain concentration and
12 persistence, understanding and memory), the hypothetical posed to
13 the vocational expert does not reflect all of plaintiff's
14 limitations and therefore has no evidentiary value. Embrey v.
15 Bowen, 849 F.2d 418, 423 (9th Cir. 1988).

16 **CONCLUSION**

17 The Commissioner's decision is not based on substantial
18 evidence. Therefore, this case is reversed and remanded for
19 payment of benefits. This case is dismissed.

20 IT IS SO ORDERED.

21 Dated this 10 day of November 2008.

25 _____ /s/ Ann Aiken
26 _____ Ann Aiken
27 United States District Judge
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